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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10 **(HONORABLE JANIS L. SANMARTINO)**

11 UNITED STATES OF AMERICA,)	CASE NO. 08CR0212-JLS
)	
12 Plaintiff,)	
)	STATEMENT OF FACTS AND
13 v.)	MEMORANDUM OF POINTS AND
)	AUTHORITIES IN SUPPORT OF
14 JUAN AGUIRRE,)	DEFENDANT'S MOTIONS.
)	
15 Defendant.)	
)	

16

17 **I.**

18 **STATEMENT OF FACTS**

19 On January 23, 2008, the Grand Jury indicted Mr. Aguirre with seven counts of
20 violations of 8 U.S.C. §§ 1324(a)(2)(B)(ii) and (iii), and 18 U.S.C. § 2 involving the
21 smuggling of an alien into the United States for financial gain and aiding and abetting.
22

23 **II.**

24 **MOTION TO COMPEL SPECIFIC DISCOVERY**

25 Mr. Aguirre moves for the disclosure of the following discovery. This request includes
26 discovery of which the government attorney knows, and discovery of which the government attorney
27 may become aware through the exercise of due diligence. See Fed. R. Crim. P. 16.
28

08CR0212-JLS

1 (1) The Defendant's Statements. The defendant requests all oral, written, or recorded
2 statements made by her, including any statements contained in the handwritten notes of any
3 government agent, and any response she made to any Miranda warnings that government agents may
4 have read to her. Fed. R. Crim. P. 16(a)(1)(A); Fed. R. Crim. P. 16(a)(1)(B).

5 (2) Arrest Reports, Notes, Dispatch Tapes. The defendant requests all arrest reports,
6 notes, dispatch tapes, and any other materials that relate to the circumstances surrounding her arrest
7 and interrogation. This request includes, but is not limited to, rough notes, records, reports,
8 transcripts, or other documents which contain statements of the defendant or any other discoverable
9 material. Fed. R. Crim. P. 16(a)(1)(A); Fed. R. Crim. P. 16(a)(1)(B); Brady v. Maryland, 373 U.S.
10 83 (1963). The government must disclose arrest reports, investigator's notes, memoranda from
11 arresting officers, dispatch tapes, sworn statements, and prosecution reports pertaining to the
12 defendant. Fed. R. Crim. P. 16(a)(1)(B).

13 (3) The Defendant's Prior Record. The defendant requests disclosure of her prior
14 record. Fed. R. Crim. P. 16(a)(1)(D).

15 (4) Evidence Seized. The defendant requests disclosure of evidence seized as a result
16 of any search, whether warrantless or with a warrant. Fed. R. Crim. P. 16(a)(1)(E).

17 (5) Tangible Objects. The defendant requests the opportunity to inspect, copy, or test
18 all documents and tangible objects, including photographs, books, papers, documents, alleged
19 controlled substances, fingerprint analyses, vehicles, or copies of portions thereof, which are material
20 to the defense, intended for use in the government's case, or were obtained from or belong to the
21 defendant. Fed. R. Crim. P. 16(a)(1)(E).

22 (6) Request for Preservation of Evidence. The defendant requests preservation of all
23 physical evidence, including dispatch tapes, that the government or its agents may destroy, lose, or
24 otherwise fail to preserve, and which relates to the arrest or the events leading to the arrest in this
25 case. This request includes, but is not limited to, the results of any fingerprint analyses, the
26 defendant's personal effects, and any other evidence seized from the defendant, or any third party.

1 **This request also encompasses a request to preserve for questioning all the people from the car**
2 **in which defendant was driving.** The defendant requests that the Court order at the time of the
3 motions hearing that the government preserve all evidence to avoid a future status conference
4 regarding that evidence.

5 (7) Reports Of Examinations And Tests. The defendant requests the opportunity to
6 inspect and copy any reports of physical or mental examinations, and any scientific tests, which are
7 material to the defense, or intended for use in the government's case. Fed. R. Crim. P. 16(a)(1)(F).

8 (8) Expert Witnesses. The defendant requests the name, qualifications, and a written
9 summary of the testimony of any person that the government intends to call as an expert witness
10 during its case. Fed. R. Crim. P. 16(a)(1)(G). Mr. Aguirre requests that the Court order disclosure
11 of this discovery at least four weeks prior to trial in order to investigate it, to prepare in limine
12 motions in a timely manner, and to prepare adequately for trial.

13 (9) Brady Material. The defendant requests all documents, statements, reports, and
14 tangible evidence favorable to the defendant on the issue of guilt, which affects the credibility of the
15 government's case, or which may result in a lower sentence under the United States Sentencing
16 Guidelines and/or 18 U.S.C. § 3552. Brady v. Maryland, 373 U.S. 83 (1963). Under Brady,
17 impeachment as well as exculpatory evidence falls within the definition of evidence favorable to the
18 accused. United States v. Bagley, 473 U.S. 667 (1985); United States v. Agurs, 427 U.S. 97 (1976).

19 (10) Giglio Information. The defendant requests all statements and/or promises,
20 express or implied, made to any government witness in exchange for their testimony in this case, and
21 all other information which could arguably impeach any government witness. Giglio v. United
22 States, 405 U.S. 150 (1972).

23 (11) Henthorn Material. The defendant requests that the government examine the
24 personnel files of all government agents who may testify in this action for Brady material.
25 United States v. Herring, 83 F.3d 1120 (9th Cir. 1996).

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1 (12) Informants And Cooperating Witnesses. The defendant requests the name,
2 address, and location of any informants or cooperating witnesses the government used or will use
3 in this case, and in particular, the name, address, and location of any informant who was a percipient
4 witness in this case, or who otherwise participated in the crime charged against Mr. Aguirre.
5 Roviaro v. United States, 353 U.S. 52, 61-62 (1957). The government must disclose any information
6 derived from informants which exculpates, or tends to exculpate, the defendant. Brady v. Maryland,
7 373 U.S. 83 (1963). The government must also disclose any information indicating bias on the part
8 of any informant or cooperating witness. Id.

9 (13) Jencks Act Material. The defendant requests, at least four weeks in advance of
10 trial, all material, including dispatch tapes, which the government must produce pursuant to 18
11 U.S.C. § 3500. Advance production will avoid the possibility of delay at the request of defendant
12 to investigate the Jencks material. Disclosure of this discovery at least four weeks prior to trial will
13 also enable Mr. Aguirre to prepare in limine motions in a timely manner and to prepare adequately
14 for trial.

15 (14) Any Proposed 404(b) Evidence. The defendant requests prior notice of any “other
16 acts” that the government intends to introduce in its case-in-chief, through impeachment, or in its
17 rebuttal case. Fed. R. Evid. 404(b); Fed. R. Evid. 609; United States v. Vega, 188 F.3d 1150 (9th
18 Cir. 1999). Mr. Aguirre requests that the Court order disclosure of this discovery at least four weeks
19 prior to trial in order to investigate the “acts,” to prepare in limine motions, and to adequately
20 prepare for trial.

21 (15) Residual Request. Mr. Aguirre intends by this discovery motion to invoke her
22 rights to discovery to the fullest extent possible under the Federal Rules of Criminal Procedure and
23 the Constitution and laws of the United States. Mr. Aguirre requests that the government provide
24 her with the above requested material sufficiently in advance of trial to avoid unnecessary delay prior
25 to cross-examination.

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1 **III**

2 **LEAVE TO FILE FURTHER MOTIONS**

3 Mr. Aguirre and defense counsel have received 368 pages of discovery in this case.
4 As new information surfaces due to the government providing discovery in response to these motions
5 or an order of this court, or through defense investigation, the defense may find it necessary to file
6 further motions, or to supplement existing motions with additional facts. Therefore, defense counsel
7 requests the opportunity to file further motions based upon information gained from discovery.

8 **IV.**

9 **CONCLUSION**

10 For the reasons stated, Mr. Aguirre requests that this Court grant his motions.

11 Respectfully submitted,

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13 Dated: February 22, 2008

14 **STEPHEN D. DEMIK**
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Aguirre